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Attorneys for Defendants

SMF SYSTEMS CORPORATION, TOM

CAFFREY AND RUBY CAFFREY

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

AUG 29 2005

at 10 o'clock and \_\_\_\_\_ min. \_\_\_\_\_ M  
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

JOHN A. MOFFETT,

Plaintiff,

vs.

SMF SYSTEMS CORPORATION, A  
MARYLAND CORPORATION; TOM  
CAFFREY; RUBY CAFFREY; DOE

) CV NO. 03-00130 MLR-BMK  
)  
) NOTICE OF HEARING;  
) DEFENDANTS SMF SYSTEMS  
) CORPORATION, TOM CAFFREY  
) AND RUBY CAFFREY'S MOTION  
) IN LIMINE NO. 10 TO EXCLUDE  
) TESTIMONY OF PETER PAY;  
) MEMORANDUM IN SUPPORT OF

CORPORATIONS 1-20; DOE	)	MOTION; DECLARATION OF
CORPORATIONS 1-20; DOE	)	LYNNE T. T. TOYOFUKU;
ENTITIES 1-20; JOHN DOES 1-20;	)	EXHIBITS "A" – "B";
JANE DOES 1-20; GOVERNMENTAL	)	CERTIFICATE OF SERVICE
AGENCIES 1-20,	)	
	)	DATE : _____
Defendants.	)	TIME : _____
	)	JUDGE : The Honorable
	)	Manuel L. Real
_____	)	
	)	TRIAL : September 19, 2005

**NOTICE OF HEARING**

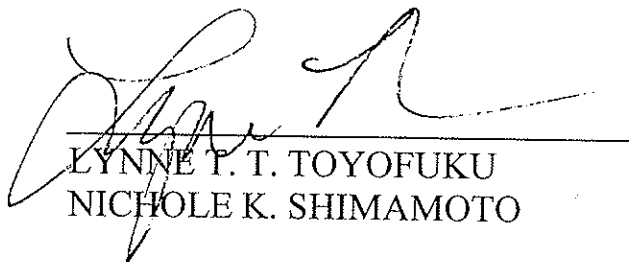
TO: BARBARA A. PETRUS, ESQ.  
DONNA H. KALAMA, ESQ.  
ANNE T. HORIUCHI BELL, ESQ.  
GOODSILL ANDERSON QUINN & STIFEL  
1099 Alakea Street  
1800 Alii Place  
Honolulu, Hawaii 96813

Attorneys for Plaintiff  
JOHN A. MOFFETT

NOTICE IS HEREBY GIVEN that Defendants SMF Systems Corporation, Tom Caffrey and Ruby Caffrey's Motion in Limine No. 10 To Exclude Testimony Of Peter Pay shall come on for hearing before the Honorable Manuel L. Real, Judge of the United States District Court, for the State of Hawaii, in his courtroom at the Prince Jonah Kuhio Kalaniana'ole Federal Building, 300 Ala Moana Boulevard, Honolulu, Hawaii, on \_\_\_\_\_ or as soon thereafter as counsel may be heard.

AUG 29 2005

DATED: Honolulu, Hawaii, \_\_\_\_\_.



LYNNE T. T. TOYOFUKU  
NICHOLE K. SHIMAMOTO

Attorneys for Defendants  
SMF SYSTEMS CORPORATION, TOM  
CAFFREY AND RUBY CAFFREY

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

JOHN A. MOFFETT,	)	CV NO. 03-00130 MLR-BMK
	)	
Plaintiff,	)	DEFENDANTS SMF SYSTEMS
	)	CORPORATION, TOM CAFFREY
vs.	)	AND RUBY CAFFREY'S <b>MOTION</b>
	)	<b>IN LIMINE NO. 10 TO EXCLUDE</b>
SMF SYSTEMS CORPORATION, A	)	<b>TESTIMONY OF PETER PAY</b>
MARYLAND CORPORATION; TOM	)	
CAFFREY; RUBY CAFFREY; DOE	)	
CORPORATIONS 1-20; DOE	)	
CORPORATIONS 1-20; DOE	)	
ENTITIES 1-20; JOHN DOES 1-20;	)	
JANE DOES 1-20; GOVERNMENTAL	)	
AGENCIES 1-20,	)	
	)	
Defendants.	)	
_____	)	

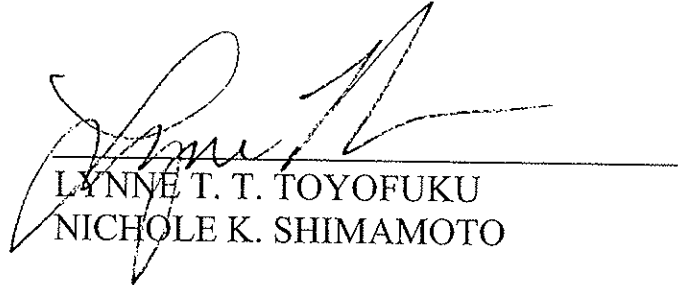
**DEFENDANTS SMF SYSTEMS CORPORATION,  
TOM CAFFREY AND RUBY CAFFREY'S MOTION IN LIMINE  
NO. 10 TO EXCLUDE TESTIMONY OF PETER PAY**

Defendants SMF SYSTEMS CORPORATION, TOM CAFFREY and RUBY CAFFREY hereby move *in limine* for an order precluding Plaintiff from introducing any deposition testimony of Peter Pay during the trial of this action, or calling Peter Pay as a witness during the trial.

This motion is brought pursuant to LR 16.9(b), Rule 7(b) of the Federal Rules of Civil Procedure, and Rules 401, 402, 403, and 602 of the Federal Rules of Evidence, and it is based on the Memorandum in Support of

Motion, and declaration and exhibit attached hereto, the records and files in this case, and such argument as may be presented on the motion.

DATED: Honolulu, Hawaii, AUG 29 2005.



LYNNE T. T. TOYOFUKU  
NICHOLE K. SHIMAMOTO

Attorneys for Defendants  
SMF SYSTEMS CORPORATION, TOM  
CAFFREY AND RUBY CAFFREY

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

JOHN A. MOFFETT,	)	CV NO. 03-00130 MLR-BMK
	)	
Plaintiff,	)	MEMORANDUM IN SUPPORT OF
	)	MOTION
vs.	)	
	)	
SMF SYSTEMS CORPORATION, A	)	
MARYLAND CORPORATION; TOM	)	
CAFFREY; RUBY CAFFREY; DOE	)	
CORPORATIONS 1-20; DOE	)	
CORPORATIONS 1-20; DOE	)	
ENTITIES 1-20; JOHN DOES 1-20;	)	
JANE DOES 1-20; GOVERNMENTAL	)	
AGENCIES 1-20,	)	
	)	
Defendants.	)	
_____	)	

**MEMORANDUM IN SUPPORT OF MOTION**

I. INTRODUCTION

Defendants SMF SYSTEMS CORPORATION (“Defendant SMF”), TOM CAFFREY and RUBY CAFFREY (collectively referred to herein as “Defendants”) anticipate that Plaintiff JOHN A. MOFFETT (“Plaintiff”) will attempt to call Peter Pay as a witness, or use his deposition testimony,<sup>1</sup> during the

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<sup>1</sup> Mr. Pay resides in California, where Plaintiff took his deposition. Upon information and belief, Mr. Pay is not expected to appear at trial in this action, but Plaintiff may likely designate Mr. Pay’s deposition testimony for use at trial. In this regard, the Court’s Minute Order dated July 7, 2005 sets the deadline for filing “Deposition Excerpt Designations” as August 29, 2005. Fed. R. Civ. Proc.

trial of this action to testify about, among other things, his knowledge of Defendant SMF's corporate structure. Mr. Pay, however, has never worked for Defendant SMF; rather, he worked for an entirely separate legal entity (albeit with a similar name) during a time period which was over a year after Plaintiff was terminated from Defendant SMF. As such, Mr. Pay's testimony is entirely irrelevant to any issues in this case and should be excluded.

## II. BACKGROUND

On August 1, 2005, Plaintiff filed his First Amended Final Pretrial Statement that listed Peter Pay as a witness. The Pretrial Statement provided the following description of Mr. Pay's expected testimony:

Will testify as to issues of liability including, but not limited to: his knowledge of Defendant SMF Systems' corporate structure, its business in Hawaii, and of its relationship to SMF Systems Technology Corporation.

See Plaintiff's First Amended Final Pretrial Statement filed on August 1, 2005, attached as Exhibit A at p. 29.

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26(a)(3)(B), however, requires parties to designate those witnesses whose testimony they expect to present by means of deposition at least 30 days before trial, which in this case, would have been on August 19, 2005. Plaintiff did not file any identification of witnesses under Rule 26(a)(3)(B) on August 19, 2005. Thus, to the extent the Court's Minute Order regarding the designation of deposition excerpts does not override Rule 26(a)(3)(B)'s requirement that parties identify their witnesses who they expect to present by means of deposition, Defendants would object to any late naming of Mr. Pay's deposition testimony for use at trial in this case.

On April 13, 2005, Plaintiff took Mr. Pay's deposition, during which Mr. Pay made it patently clear that he had never been employed by Defendant SMF. See Deposition transcript of Peter Pay ("Pay Depo."), excerpts of which are attached hereto as Exhibit B, at ps. 7-8. Instead, Mr. Pay explained that he was employed by SMF Systems Technology Corporation, which was a separate legal entity from Defendant SMF. See Pay Depo., at p. 8. Mr. Pay also testified that he was employed with SMF Systems Technology Corporation "from the middle of May 2002 to the end of 2003." See Pay Depo., at p.8. Thus, even assuming there was some corporate relationship between Defendant SMF and SMF Systems Technology Corporation, Mr. Pay was employed with SMF Systems Technology Corporation over one year after Plaintiff was terminated from Defendant SMF on March 22, 2001.

### III. ARGUMENT

#### A. Mr. Pay's Testimony Is Not Relevant and Should Be Excluded Under Fed. R. Evid. 401 and 402

Under Fed. R. Evid. 402, "[e]vidence which is not relevant is not admissible." Fed. R. Evid. 401 defines relevant evidence as:

Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Fed. R. Evid. 401.



Here, Plaintiff intends to call Mr. Pay to testify about Defendant SMF's corporate structure and its business in Hawaii. Mr. Pay, however, since Mr. Pay was not employed by Defendant SMF, but rather for another separate company, any testimony offered by Mr. Pay would be irrelevant to proving any of Plaintiff's material allegations against Defendant SMF.

Moreover, even assuming there was some legal relationship (which there was not) between the company Mr. Pay worked for, SMF Systems Technology Corporation, and Defendant SMF, testimony regarding any relationship between the two separate entities is irrelevant to proving any of Plaintiff's allegations against Defendant SMF.

Furthermore, because Mr. Pay did not commence employment with SMF Systems Technology Corporation until May, 2002, over one year after Plaintiff was terminated from SMF Systems Corporation, any testimony he could provide is temporally irrelevant since he has no knowledge relevant to the time period when Plaintiff was employed and terminated by Defendant SMF.

B. Mr. Pay's Testimony Is Inadmissible Under Fed. R. Evid. 602 Because He Lacks Personal Knowledge

Under Fed. R. of Evid. 602, "[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." As discussed above, given that Mr. Pay has never worked for Defendant SMF, he lacks personal knowledge about Defendant

SMF's corporate affairs and business in Hawaii. Accordingly, Mr. Pay lacks the personal knowledge required under Fed. R. Evid. 602.

C. The Probative Value of Mr. Pay's Testimony Is Substantially Outweighed by the Danger of Unfair Prejudice

Mr. Pay's testimony is inadmissible on the basis that "its probative value is substantially outweighed by the danger of unfair prejudice, confusing the issues, or misleading the jury . . . ." Fed. R. Evid. 403. First, the probative value of Mr. Pay's testimony is exceedingly low because, as described above, it is simply not relevant to the present case and is not based upon personal knowledge.

Second, there is no question that Mr. Pay's testimony would confuse the issues, mislead the jury, and therefore result in unfair prejudice to Defendants. Although the relevant facts of the present case are not complicated, the introduction of non-relevant facts (particularly, facts regarding a corporation that is not a defendant in this case, or allegations about Defendant SMF that are not based on personal knowledge) is likely to confuse and mislead the jury.

Accordingly, because the probative value of Mr. Pay's testimony is exceedingly low and the prejudicial effect of his testimony is extremely high, this Court should grant this Motion and exclude Mr. Pay from testifying at trial in this case.

In addition, because Plaintiff knowingly listed Mr. Pay in his First Amended Final Pretrial Statement even after he took Mr. Pay's deposition, where

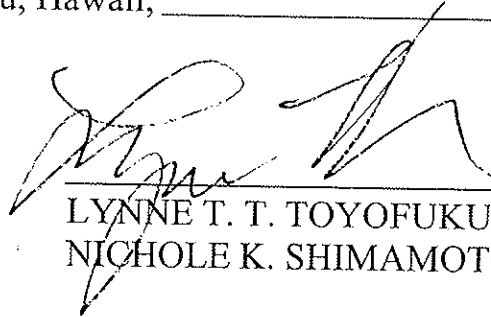
Mr. Pay clearly admitted that he had never worked for Defendant SMF, Defendants further request that they be awarded their reasonable attorneys' fees in preparing this Motion in Limine.

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court enter an order *in limine* precluding Plaintiff from introducing any deposition testimony of Mr. Pay, or calling Mr. Pay as a witness, during the trial of this action. Defendants further request that they be awarded their reasonable attorneys' fees in preparing this Motion in Limine.

**AUG 29 2005**

DATED: Honolulu, Hawaii, \_\_\_\_\_.



\_\_\_\_\_

LYNNE T. T. TOYOFUKU  
NICHOLE K. SHIMAMOTO

Attorneys for Defendants  
SMF SYSTEMS CORPORATION, TOM  
CAFFREY AND RUBY CAFFREY

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

JOHN A. MOFFETT,	)	CV NO. 03-00130 MLR-BMK
	)	
Plaintiff,	)	DECLARATION OF LYNNE T. T.
	)	TOYOFUKU
vs.	)	
	)	
SMF SYSTEMS CORPORATION, A	)	
MARYLAND CORPORATION; TOM	)	
CAFFREY; RUBY CAFFREY; DOE	)	
CORPORATIONS 1-20; DOE	)	
CORPORATIONS 1-20; DOE	)	
ENTITIES 1-20; JOHN DOES 1-20;	)	
JANE DOES 1-20; GOVERNMENTAL	)	
AGENCIES 1-20,	)	
	)	
Defendants.	)	
_____	)	

**DECLARATION OF LYNNE T. T. TOYOFUKU**

I, LYNNE T. T. TOYOFUKU, make the following declaration to the best of my knowledge, information and belief, with penalty of perjury under the laws of the State of Hawaii and the United States of America:

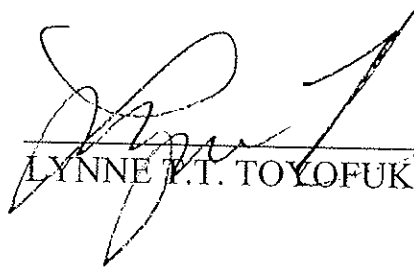
1. I am a partner with Marr Hipp Jones & Wang, a Limited Liability Law Partnership, am licensed to practice law in the State of Hawaii, and have been admitted to practice law before this Court. I am one of the attorneys representing Defendants SMF Systems Corporation, Tom Caffrey and Ruby Caffrey in the above-entitled action.

2. Exhibit A attached hereto is a true and correct copy of Plaintiff's First Amended Final Pretrial Statement filed August 1, 2005.

3. Exhibit B attached hereto is a true and correct copy of excerpted transcript pages from the deposition of Peter Pay taken on April 13, 2005.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, AUG 29 2005

  
LYNNE T.T. TOYOFUKU

GOODSILL ANDERSON QUINN & STIFEL  
A LIMITED LIABILITY LAW PARTNERSHIP LLP

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Facsimile: (808) 547-5880

Attorneys for Plaintiff

JOHN A. MOFFETT

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

AUG 01 2005

at 3 o'clock and 50 min P  
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

JOHN A. MOFFETT,

Plaintiff,

vs.

SMF SYSTEMS CORPORATION, a  
Maryland corporation; TOM  
CAFFREY; RUBY CAFFREY; DOE  
CORPORATIONS 1-20; DOE  
PARTNERSHIPS 1-20; DOE  
ENTITIES 2-10; JOHN DOES 1-20;  
JANE DOES 1-20; DOE  
GOVERNMENTAL AGENCIES 1-20,

Defendants.

CIVIL NO. 03-00130 MLR/BMK

PLAINTIFF'S FIRST AMENDED  
FINAL PRETRIAL STATEMENT;  
CERTIFICATE OF SERVICE

TRIAL: SEPTEMBER 19, 2005

JUDGE: HON. MANUEL L. REAL

WITNESS	TESTIMONY
Nekooraad-Long, Haleh	Will testify as to liability and damages including, but not limited to: her treatment of Plaintiff.
Nelson, Monica	Will testify as to issues of liability including, but not limited to: her employment at SMF and Fort Shafter; the harassment by Millard and Wes Green; her reports of the harassment to Nehmad; SMF's response to her reports of harassment; her giving Plaintiff authority to act on her behalf as to the harassment; her knowledge of illegal and/or improper activities at SMF and TNOSC; Millard's improper control over SMF employees; her participation in government investigations into Millard and SMF; and her termination from SMF.
Noel, Peter	Will testify as to issues of liability including, but not limited to: his employment at SMF and Fort Shafter; his knowledge of illegal and/or improper activities at SMF and TNOSC; Millard's improper control over SMF employees; his participation in government investigations into Millard and SMF; his knowledge of Plaintiff's work at SMF; the hiring of Langley as project manager.
O'Brennan, Laura	Will testify as to issues of liability including, but not limited to: SMF's contract to provide technical services to support the 516 <sup>th</sup> Signal Brigade at Fort Shafter, Hawaii.
Olsen, Matthew	Will testify as to issues of liability, including, but not limited to: SMF's contract to provide technical services to support the 516 <sup>th</sup> Signal Brigade at Fort Shafter, Hawaii.
Pay, Peter	Will testify as to issues of liability including, but not limited to: his knowledge of Defendant SMF Systems' corporate structure, its business in Hawaii, and of its relationship to SMF Systems Technology Corporation.

THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

JOHN A. MOFFETT,

Plaintiff,

vs.

SMF SYSTEMS CORPORATION, a  
Maryland corporation; TOM  
CAFFREY; RUBY CAFFREY; DOE  
CORPORATIONS 1-20; DOE  
PARTNERSHIPS 1-20; DOE  
ENTITIES 2-10; JOHN DOES  
1-20; JANE DOES 1-20;  
DOE GOVERNMENTAL AGENCIES 1-20,

Defendants.

CERTIFIED COPY

Civil No. 03-00130

HG/BMK

DEPOSITION OF

PETER PAY

SAN RAMON, CALIFORNIA

APRIL 13, 2005

ATKINSON-BAKER, INC.

COURT REPORTERS

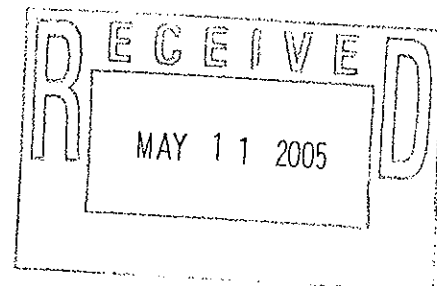
180 Montgomery Street, Suite 800

San Francisco, California 94104

(800) 288-3376

REPORTED BY: SUSAN CAMPBELL, CSR 4563

FILE NO.: 9F0325E



**EXHIBIT "B"**



THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

- - -

JOHN A. MOFFETT,

Plaintiff,

vs.

Civil No. 03-00130  
HG/BMK

SMF SYSTEMS CORPORATION, a  
Maryland corporation; TOM  
CAFFREY; RUBY CAFFREY; DOE  
CORPORATIONS 1-20; DOE  
PARTNERSHIPS 1-20; DOE  
ENTITIES 2-10; JOHN DOES  
1-20; JANE DOES 1-20;  
DOE GOVERNMENTAL AGENCIES 1-20,

Defendants.

DEPOSITION OF PETER PAY, taken on behalf of  
Plaintiff, at Courtyard by Marriott, Boardroom, 18090  
San Ramon Valley, San Ramon, California, commencing at  
3:46 p.m., Wednesday, April 13, 2005, before Susan  
Campbell, CSR 4563.

1 California the Zip Code of 94583.

2 Q. All right. And who is your current  
3 employer?

4 A. I currently work for a company called Exel,  
5 E-x-e-l, Exel Global Logistics, Inc.

6 Q. And where is Exel Global Logistics, Inc.  
7 located?

8 A. Do you want the full address or just the  
9 city?

10 Q. Just the city is fine.

11 A. Hayward, California.

12 Q. I'm sorry. Is Hayward H-a-y-w-o-o-d or  
13 H-e-y?

14 A. It's H-a-y-w-a-r-d.

15 Q. Okay. And how long have you been employed  
16 by Exel Global Logistics?

17 A. I was on contract to them as an independent  
18 contractor from January through to the end of April,  
19 2004. I became a full-time employee on May 1st, 2004.

20 Q. Okay. And what is your position with Exel  
21 Global Logistics?

22 A. Director, financial planning and analysis.

23 Q. All right. Have you ever been employed by  
24 SMF Systems Corporation?

25 A. I have not been employed by SMF Systems

1 Corporation. I was employed by a company with a  
2 similar name, but it is a separate legal entity.

3 Q. And what company was that?

4 A. SMF Systems Technology Corporation.

5 Q. Okay. During what period of time did you  
6 work for SMF Systems Technology Corporation?

7 A. From the middle of May 2002 to the end of  
8 2003.

9 Q. All right. And then you indicated that you  
10 started working as an independent contractor for Exel  
11 Global Logistics in January of 2004. Did you take any  
12 break in December of 2003 prior to -- between SMF  
13 Systems Technology Corporation and your job at Exel?

14 A. My last few days as an employee with SMF  
15 Systems Technology Corporation, I was actually on  
16 vacation between Christmas and New Year. But I did  
17 not take any period when I wasn't employed or a  
18 contractor, if that answers the question.

19 Q. Okay. Sure. And where were you employed  
20 prior to SMF Systems Technology Corporation?

21 A. A company called Freight Solutions  
22 International, LLC.

23 Q. And during what period of time did you work  
24 for that company?

25 A. From October 1996 to the middle of May 2002.

REPORTER'S CERTIFICATE

I, Susan Campbell, CSR No. 4563, Certified  
Shorthand Reporter, certify:


That the foregoing proceedings were taken  
before me at the time and place therein set forth, at  
which time the witness was put under oath by me;

That the testimony of the witness, the  
questions propounded, and all objections and  
statements made at the time of the examination were  
recorded stenographically by me and were thereafter  
transcribed;

That the foregoing is a true and correct  
transcript of my shorthand notes so taken.

I further certify that I am not a relative  
or employee of any attorney of the parties, nor  
financially interested in the action.

Dated this 28th day of April, 2005, at  
Coloma, California.

  
\_\_\_\_\_  
SUSAN CAMPBELL, CSR No. 4563

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

JOHN A. MOFFETT,	)	CV NO. 03-00130 MLR-BMK
	)	
Plaintiff,	)	CERTIFICATE OF SERVICE
	)	
vs.	)	
	)	
SMF SYSTEMS CORPORATION, A	)	
MARYLAND CORPORATION; TOM	)	
CAFFREY; RUBY CAFFREY; DOE	)	
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	)	
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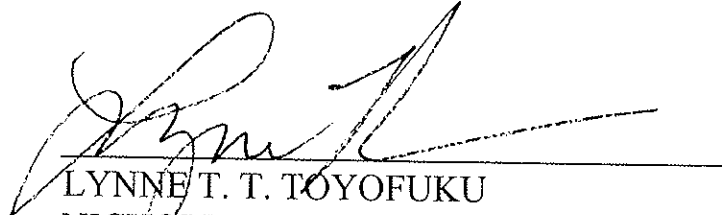
**CERTIFICATE OF SERVICE**

I hereby certify that on the date noted below, a copy of the foregoing document will be duly served upon the following parties by hand delivery addressed as follows:

BARBARA A. PETRUS, ESQ.  
DONNA H. KALAMA, ESQ.  
ANNE T. HORIUCHI BELL, ESQ.  
GOODSILL ANDERSON QUINN & STIFEL  
1099 Alakea Street  
1800 Alii Place  
Honolulu, Hawaii 96813

Attorneys for Plaintiff  
JOHN A. MOFFETT

DATED: Honolulu, Hawaii, AUG 29 2005



LYNNE T. T. TOYOFUKU  
NICHOLE K. SHIMAMOTO

Attorneys for Defendants  
SMF SYSTEMS CORPORATION,  
TOM CAFFREY AND RUBY CAFFREY

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Facsimile: (808) 547-5880

Attorneys for Plaintiff

JOHN A. MOFFETT

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

JOHN A. MOFFETT,

Plaintiff,

vs.

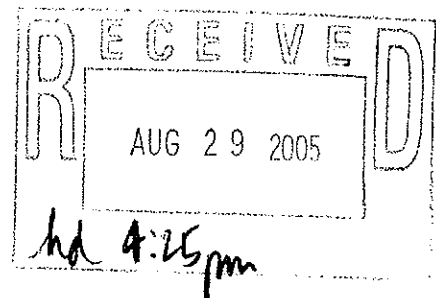
SMF SYSTEMS CORPORATION, a  
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JANE DOES 1-20; DOE  
GOVERNMENTAL AGENCIES 1-20,

Defendants.

CIVIL NO. 03-00130 MLR/BMK

PLAINTIFF'S DEPOSITION  
DESIGNATIONS; CERTIFICATE OF  
SERVICE

TRIAL: SEPTEMBER 19, 2005  
JUDGE: HON. MANUEL L. REAL



**PLAINTIFF'S DEPOSITION DESIGNATIONS****DEPOSITION OF RUBY CAFFREY, taken on April 1, 2005.**

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Page 69: Lines 1-25
Page 70: Lines 1-11; 24-25
Page 71: Lines 1-14; 18-21
Page 72: Lines 6-25
Page 73: Lines 14-23
Page 78: Lines 15-17 until "7"; 22-25
Page 79: Line 1
Page 82: Lines 17-23
Page 83: Lines 8-12; 16-20
Page 89: Lines 16-25
Page 90: Lines 1-16; 25
Page 91: Lines 1-10
Page 92: Lines 1-20
Page 101: Lines 18 starting with "do"; 19-20
Page 102: Lines 2-6
Page 105: Lines 24-25
Page 106: Lines 1-7
Page 107: Lines 16 starting with "for"; 17-25
Page 108: Lines 1-5; 11-23
Page 110: Lines 9-22
Page 114: Lines 20-25
Page 115: Lines 1-4; 13-19
Exhibits 1, 2, 3, 7 and 9

**DEPOSITION OF THOMAS CAFFREY, taken on March 31, 2005.**

<b>Page(s): Lines</b>
Page 5: Lines 22-25
Page 6: Lines 2-8

Page 8: Lines 7-8 ending with “education”; 10-18; 20-25
Page 9: Lines 1-2; 6 starting with “were”; 7-11; 17 starting with “Now”; 18-25
Page 10: Lines 1-22; 25
Page 11: Lines 1-4 ending with “1984”; 8-25
Page 12: Lines 1-10; 16-25
Page 13: Lines 1; 7-20; 25
Page 14: Lines 1-15
Page 15: Lines 6-10; 20-25
Page 16: Lines 1-8; 25 starting with “where”
Page 17: Lines 2-13; 22-25
Page 18: Lines 1-2; 6 starting with “Now”; 7-8; 12 starting with “What”; 13-25
Page 19: Lines 1-25
Page 20: Line 1
Page 21: Lines 21-25
Page 22: Lines 1-9 ending with “authority”; 19-22; 23 starting with “Do”; 24-25
Page 23: Lines 1-25
Page 24: Lines 1-12; 15-25
Page 25: Lines 1-6; 16-25
Page 26: Lines 1-15; 19-25
Page 27: Lines 1-3; 9 starting with “so”; 10-25
Page 28: Lines 1-18; 21 starting with “when”; 22-25
Page 29: Lines 1-20 ending with “officer”
Page 30: Lines 5 starting with “This”; 6-13
Page 31: Lines 4 starting with “what”; 5-10; 20-21; 24-25
Page 32: Lines 1-20
Page 33: Lines 19-25
Page 34: Lines 1-7 ending with “not”; 11-25
Page 35: Lines 1-25
Page 36: Lines 1-10; 11 starting with “who”; 12-13; 23-25
Page 37: Lines 1-4; 9-12; 24-25
Page 38: Lines 1-25
Page 39: Lines 1-25
Page 40: Lines 1-7 ending with “manager”

Page 41: Lines 1-24 ending with "know"
Page 42: Lines 3 starting with "to"; 4-6
Page 43: Lines 13-25
Page 44: Lines 1-25
Page 45: Lines 1-10 ending with "no"; 19 starting with "Do"; 20-25
Page 46: Lines 1-15; 16 starting with "who"; 17-24
Page 47: Lines 19-21
Page 48: Lines 2-6 ending with "know"; 8-17 ending with "don't"; 19-24 ending with "no"
Page 49: Lines 9-15; 18-25
Page 50: Lines 1-10; 16-24
Page 52: Lines 14-20
Page 53: Line 8-23
Page 54: Lines 3-25
Page 55: Lines 1-10; 14 starting with "I think"; 15-23
Page 56: Lines 4-20
Page 57: Lines 4-12; 16-21
Page 58: Lines 9-19; 21-25
Page 59: Lines 1-8; 13-17; 20-25
Page 60: Lines 1-10; 21-24
Page 61: Lines 21-25
Page 62: Lines 1-10; 23 starting with "if"; 24-25
Page 63: Lines 1-25
Page 64: Lines 1-18 ending with "him"; 21-25
Page 65: Lines 1-14; 23-25
Page 66: Lines 1-7; 16-25
Page 67: Lines 1-25
Page 68: Lines 1-25Page
Page 69: Lines 1-25
Page 70: Lines 1-3 ending with "No"
Page 71: Lines 1 starting with "Now"; 2-25
Page 72: Lines 1-3; 5 starting with "do"; 6-8; 11-25
Page 73: Lines 1-18
Page 74: Lines 6-9; 13-25
Page 75: Lines 1-5; 12 starting with "part"; 13-25
Page 76: Lines 1-2; 6-25
Page 77: Lines 1-7
Page 78: Lines 7-12 ending with "choice"; 14 starting

with "So"; 15-25
Page 79: Lines 1-3; 19-25
Page 80: Lines 1-14
Page 81: Lines 19 starting with "Did"; 20-25
Page 82: Lines 1-10; 11 starting with "So"; 12-25
Page 83: Lines 1-4
Page 86: Lines 2-7; 10 starting with "Do"; 11-18; 22-24 ending with "tardiness"
Page 87: Lines 12-29 ending with "you"
Page 88: Lines 24-25
Page 89: Lines 1-4; 6 starting with "I"; 7-21 ending with "know"; 25
Page 90: Lines 1-6 ending with "reigns"; 21 starting with "SMF"; 22-25
Page 91: Lines 1-4 ending with "while"; 6-25
Page 92: Lines 1-8; 19-21; 22 starting with "Yeah", and "I think my"; 23 "was" and "John"; 25 "called", "and I don't"
Page 93: Lines 1-3; 12 starting with "you"; 13-18 ending with obnoxious
Page 94: Lines 6-7 and 9 starting with "I"
Page 95: Lines 4 starting with "Now"; 5-21; 23-25
Page 96: Lines 1-17 ending with "degree"; 19 starting with "he"; 20-23 ending with "facility"
Page 97: Lines 1-5 ending with "version"; 8-21 ending with "issues"
Page 98: Lines 1 starting with "But"; 2-13 ending with "available"; 15 starting with "So"; 16-17; 20-25
Page 99: Lines 1-2; 12-25
Page 100: Lines 1-10
Page 102: Lines 12 starting with "I"; 13-17
Page 104: Lines 23-25
Page 105: Lines 1-7 ending with "notification"; 23 starting with "at"; 24-25
Page 106: Lines 1; 7-10; 14-25
Page 107: Lines 1-25
Page 108: Lines 1-5
Page 109: Lines 7 starting with "Exhibit"; 8-25
Page 110: Lines 1-11; 21-25

Page 111: Lines 1-3; 7-25
Page 112: Lines 1-7
Page 113: Lines 6-25
Page 114: Lines 15-25
Page 115: Lines 1-7
Page 116: Lines 5-13 ending with "Exhibit"; 16 starting with "It"; 17-25
Page 117: Lines 1-5; 13-16; 20-25
Page 118: Lines 1-4; 12-25
Page 119: Lines 1-11
Page 120: Lines 16-23; 24 starting with "So"; 25
Page 121: Lines 1 ending with "before"; 3 starting with "subsequent"; 4-6 ending with "reason"
Page 123: Lines 23-25
Page 124: Lines 1-12; 19-22; 25 ending with "from"
Page 125: Lines 1 starting with "Steve"; 2-25
Page 126: Lines 1-25
Page 127: Lines 1-10 ending with "No"
Page 128: Lines 5 starting with "Exhibit"; 6-21; 25
Page 129: Lines 1 starting with "Are"; 2-5; 18-20
Page 130: Lines 1-17; 24-25
Pages 131: Lines 1-2 ending with "know"
Page 136: Lines 22-25
Page 137: Lines 1-4; 16 starting with "from"; 17-25
Page 138: Lines 1-10; 20-25
Page 139: Line 1
Page 145: Lines 19-22
Page 146: Lines 1-4; 11 starting with "Can"; 12-25
Page 147: Lines 1-12
Page 161: Lines 9-13

**DEPOSITION OF LT. COL. MARK JOHNSON, taken on April 8, 2005.**

<b>Page(s): Lines</b>
Page 3: Line 11
Page 5: Lines 20-22
Page 6: Lines 1; 6-8
Page 7: Lines 8-22

Page 8: Lines 1-5; 12-18; 19 starting with “what”22
Page 9: Lines 1-6; 7 starting with “when; 9 starting with “end” through 19; 21 starting with “during”; 22
Page 10: Lines 1 starting with “I”; 2 4 starting with “at”; 5-19; 20 starting with “when; 21-22
Page 11: Lines 1-22
Page 12: Lines 1-8; 10-22
Page 13: Lines 1-20; 22
Page 14: Lines 1-10 ending with “work”; 12-19
Page 15: Lines 4 starting with “and”; 5-6; 8-13; 15-22
Page 16: Lines 1; 3-6
Page 17: Lines 1-3 ending with”in”; 6-22
Page 18: Lines 1-3; 9-22
Page 19: Lines 1-2; 4-11; 13-22
Page 20: Lines 1-3; 22
Page 21: Lines 1-8; 10-14 ending with “exist”; 19 starting with “and”; 20-22
Page 22: Lines 1 ending with “day”; 3 starting with the 2 <sup>nd</sup> “I think”; 4 ending with “up”; 5-6; 9-19; 21-22
Page 23: Lines 1 starting with “after” 2-21
Page 24: Lines 1 starting with “do”; 2-20; 22
Page 25: Lines 1-2; 4-6; 8-16; 17 starting with “did”; 18-22
Page 26: Lines 1 starting with “did”; 2-16; 21 starting with “do”;22
Page 27: Lines 1; 3-12; 14 starting with “what; 15-22
Page 28: Lines 1-13
Page 29: Lines 15 starting with “at”; 16-19; 21-22
Page 30: Lines 1-2; 4-6; 8-12; 22 starting with “you”
Page 31: Lines 1-2; 3 starting with “so”; 4-20; 21 starting with “when”; 22
Page 32: Lines 1 starting with when; 2-10; 11 starting with “essentially”; 12-16; 17 starting with “what”;18 ending with TDY.
Page 33: Lines 10 starting with “can;11-13; 16 starting with “do”; 17-19; 20 starting with “can”; 21-22
Page 34: Lines 1-6; 7 starting with “so”; 8-12; 14-22
Page 35: Lines 1-10; 12-16; 17 starting with “do”; 18-19; 20 “I don’t”;21-22

Page 36: Lines 1-6; 7 starting with "after"; 8 ending with "ended"; 9 starting with "what"; 12 starting with "he"; 13-22
Page 37: Lines 1-11; 18-20
Page 38: Lines 15-22
Page 39: Lines 1-11

**DEPOSITION OF RICHARD KELLY, taken on April 14, 2005.**

<b>Page(s): Lines</b>
Page 4: Lines 7-16
Page 6: Lines 16-25
Page 7: Lines 1-17; 20-24
Page 8: Lines 2-25
Page 9: Lines 1; 6-15
Page 10: Lines 3-7; 12-25
Page 11: Lines 3-7; 14-16
Page 12: Lines 24-25
Page 13: Lines 1-16; 21 ending with "compensated"; 24
Page 14: Lines 4-18; 20 starting with "did"; 21-25
Page 15: Lines 1-2; 17-25
Page 16: Lines 14-20
Page 17: Lines 9-10; 13-16; 22-25
Page 18: Line 1-4; 13 starting with "you"; 14-24; 25 ending with "source:
Page 19: Lines 6-25
Page 20: Lines 1-10; 24 starting with "can; 25
Page 21: Lines 1-3; 11-17; 23-25
Page 22: Lines 1 starting with "Can"; 2-5; 14-22
Page 23: Lines 7-14; 24-25
Page 24: Lines 1-12; 16-21
Page 26: Lines 3-25
Page 27: Line 1
Page 31: Line 23-24
Page 32: Lines 1-4; 9-22; 24-25
Page 33: Lines 1-4
Page 37: Line 5-11
Page 39: Lines 19-25



Page 40: Lines 1-25
Page 41: Lines 1-6; 15-24
Page 42: Lines 9-20
Page 44: Lines 22-24
Page 45: Lines 4 starting with "He"; 5-6; 7-25
Page 46: Lines 1-7; 16-18
Page 47: Lines 5-12
Page 48: Lines 10-23
Page 49: Lines 5-14; 18-25
Page 50: Lines 1-3; 12-15; 23-25
Page 51: Lines 4 starting with "Have"; 5-24
Page 52: Lines 12 starting with "you"; 13-14
Page 60: Lines 19-22
Page 71: Lines 15-23 ending with "correct"; 24 starting with "that"; 25
Page 72: Line 1; 24-25
Page 73: Line 1-3
Page 75: Lines 2 starting with "for"; 3-6
Page 76: Lines 12-16; 20-21
Page 78: Lines 6-8; 10-22
Page 79: Lines 3-7
Page 80: Lines 19-24
Page 81: Lines 3-5
Page 83: Lines 19-23
Page 84: Lines 2-3; 11-15

**DEPOSITION OF PETER PAY, taken on April 13, 2005.**

<b>Page(s): Lines</b>
Page 5: Lines 1-3
Page 6: Lines 20 starting with "Could"; 21-25
Page 7: Lines 1-7; 11; 15-25
Page 8: Lines 1-8
Page 9: Lines 2 starting with "what"; 3-4; 5 starting with "did"; 6-25
Page 10: Lines 1-11
Page 11: Lines 3 starting with "Now"; 4-8 ending with "shareholders"; 14-18; 19 starting with "Is"; 20-25



Page 12: Lines 1-25
Page 13: Lines 1-2 ending with "Ramon"; 12 starting with "where"; 13-25
Page 14: Lines 1-12; 16-24 ending with "space"
Page 16: Lines 1-10
Page 17: Lines 22-25
Page 18: Lines 1-5
Page 19: Lines 7 starting with "Prior"; 8-25
Page 20: Lines 1-12
Page 24: Lines 11 starting with "When"; 12-24
Page 28: Lines 3 starting with "When"; 4-7; 11-25
Page 29: Lines 1-25
Page 30: Lines 1-2; 6 starting with "For"; 7-10; 13 starting with "Well"; 14-18
Page 31: Lines 5-11; 19 starting with "a"; 20-23
Page 33: 1 starting with "You've"; 2-25
Page 34: Lines 1-3; 7 starting with "With"; 8-25
Page 35: Lines 1-17
Page 36: Lines 2 starting with "This"; 3-8; 18-25
Page 37: 1-14; 15 starting with "who"; 16-18 ending with "employees"; 21 starting with "would"; 22-25
Page 38: Lines 19 starting with "During"; 20-25 ending with "Hawaii"
Page 39: Lines 9 starting with "In"; 10-19
Page 40: 20-25
Page 43: Lines 2-25
Page 44: Lines 1-3
Page 48: Lines 19 starting with "With"; 20-25
Page 49: Lines 1-24
Page 63: Lines 16-25
Page 64: Lines 1-9
Page 66: Lines 5 starting with "When"; 6-21
Page 67: Lines 6 starting with "did"; 7-25
Page 68: Lines 1-11

**DEPOSITION OF ROBERT NEHMAD, taken on March 23, 2005.**

<b>Page(s): Lines</b>
Page 4: Lines 3-7; 10-13; 16-17
Page 11: Lines 13 starting with "Where"; 14; 22-25
Page 12: Lines 1-9
Page 13: Lines 11 starting with "Why"; 12 ending with "history"
Page 14: Lines 12-25
Page 15: Lines 6-18; 20-25
Page 16: Lines 3-6
Page 18: Lines 3-7 ending with "area"; 9; 21-25
Page 19: Lines 1-2; 6-11; 18-25
Page 20: Lines 9; 21
Page 21: Lines 7-8; 13-22
Page 22: Line 11
Page 28: Lines 3-5; 11-19; 25 starting with "Now"
Page 29: Lines 1-4; 6; 8-10 ending with "examples"; 15-22; 24 starting with "The"; 25
Page 30: Lines 1-14 ending with "late"; 16
Page 32: Lines 18 starting with "who"; 20-22 ending with "time"; 24-25 starting with "And"
Page 33: Lines 1-2; 5-7; 15 starting with "Was"; 16-21
Page 34: Lines 1; 2-25 starting with "I"
Page 35: Lines 1-4; 22-25
Page 36: Lines 1-2; 7-8; 10-14; 16-25
Page 37: Lines 1-19 ending with "him"; 21
Page 40: Lines 14 starting with "When"; 15; 17-19; 21-25
Page 41: Lines 1
Page 42: Lines 10-12; 15-16; 24-25
Page 43: Lines 1-3
Page 47: Lines 23-24
Page 48: Lines 1-5; 17 starting with "there"; 18-19; 21-22
Page 55: Lines 11-22
Page 57: Lines 5-17; 25

Page 58: Lines 1; 3; 5-25
Page 59: Lines 1-12
Page 65: Lines 18-25
Page 66: Lines 1-13; 15-25
Page 67: Lines 1-6; 10-11; 13-14; 22; 24-25
Page 68: Lines 1-12; 15-23; 25
Page 69: Lines 1-25
Page 70: Lines 3-10; 25 starting with "And"
Page 71: Lines 1-3; 11-18
Page 72: Lines 17-19; 24-25
Page 73: Lines 1-4 ending with "option"
Page 76: Lines 5-6; 10-12
Page 77: Lines 2-5; 7 starting with "Her"; 8-22; 24-25
Page 78: Lines 1-2; 7-14; 17 starting with "Was"; 18 ending with "voicemail"; 21-25
Page 79: Lines 1-5; 8-25
Page 80: Lines 1-5; 11-13; 24
Page 81: Lines 19 starting with "Did"; 20-23
Page 82: Lines 3-5; 7
Page 83: Lines 3-5; 10-13; 15-17; 20-25
Page 84: Lines 1; 3-5 ending with "date"; 9-11; 25
Page 85: Lines 1-3; 5-14; 18-25
Page 86: Line 1
Page 87: Lines 17 starting with "did"; 18-22; 23 starting with "where"; 24-25
Page 88: Lines 5-6; 13-15; 18-19
Page 89: Line 20 starting with "Did"; 21-22
Page 90: Lines 4; 6; 10-11; 12 starting with "do"; 13; 22-25
Page 91: Lines 13-17; 20-22
Page 92: Lines 20-24
Page 93: Lines 15-25
Page 94: Lines 1-25
Page 95: Lines 1-3
Page 106: Lines 7 starting with "at"; 8-13 ending with "SMF"; 17-23 ending with "conversation"; 25 starting with "I"
Page 107: Lines 1-22
Page 109: Lines 11-17; 24-25

Page 110: Lines 1-2; 5-9; 12-23
Page 111: Lines 1-6; 8-9; 21-25
Page 112: Lines 1; 15-16; 18-20; 22-25
Page 113: Lines 1-5 ending in "responsibility"; 7-15
Page 118: Lines 2-6; 24-25
Page 119: Lines 1; 3-4; 6-11 ending with "opinion"
Exhibits 1 and 2

Plaintiff reserves the right to use the deposition exhibits that are referenced in the deposition excerpts.

DATED: Honolulu, Hawaii, August 29, 2005.



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Attorneys for Plaintiff  
JOHN A. MOFFETT

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

JOHN A. MOFFETT,

Plaintiff,

vs.

SMF SYSTEMS CORPORATION, a  
Maryland corporation; et al.,

Defendants.

CIVIL NO. 03-00130 HG/BMK

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was duly served on this  
date upon the following person(s) at the address(es) listed below by the means  
indicated:

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NICHOLE K. SHIMAMOTO, ESQ.  
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1001 Bishop Street, 1550 Pauahi Tower  
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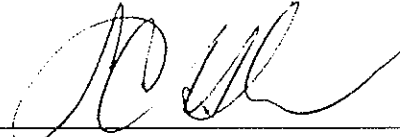
Hand Delivery

X

H. CLYDE LONG, ESQ.  
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LaFayette, CA 94549

X

DATED: Honolulu, Hawaii, August 29, 2005.

A handwritten signature in black ink, appearing to be 'B. A. Petrus', written over a horizontal line.

BARBARA A. PETRUS  
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DONNA H. KALAMA

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JOHN A. MOFFETT